



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 15, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0185

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional	Not Sustained - Unfounded
# 2	8.100 - De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained - Unfounded (Expedited)
# 3	16.090 - In-Car and Body-Worn Video, 16.090-POL-1 Recording with ICV and BWV, 5. Employees Recording Police Activity, b. When Employees Record Activity	Not Sustained - Unfounded (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant observed Named Employee #1's (NE#1's) interaction with Community Member #1 (CM#1). The Complainant alleged NE#1 failed to de-escalate a situation by touching CM#1, causing CM#1 to recoil. The Complainant also alleged he confronted NE#1 about the interaction, but NE#1 was unprofessional and threatened him with violence. Finally, the Complainant alleged NE#1 turned off his body-worn video before threatening to push him.

ADMINISTRATIVE NOTE:

Allegations #2 and #3 were designated for Expedited Investigation. This means that OPA, with the Office of Inspector General's (OIG's) review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees concerning these allegations.

On September 20, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

OPA received the complaint and opened an investigation. During its investigation, OPA reviewed the complaint, computer aided dispatch (CAD) call reports, a behavioral crisis template, incident report, and body-worn video (BWV). OPA also interviewed the Complainant and NE#1.



a. OPA Complaint

The Complainant filed a web-based complaint. The Complainant wrote about observing NE#1 and another officer (Witness Officer #1, or WO#1) approach CM#1, who the Complainant stated, “obviously has mental struggles.” The Complainant said NE#1 “immediately went hands on” and “constantly” put his hands on CM#1. The Complainant wrote that NE#1 and WO#1 then walked away from CM#1. The Complainant wrote that he approached the officers to state that, “touching people may be a trigger.” The Complainant stated WO#1 was polite, but described NE#1 as “dismissive,” “condescending,” and “devaluing.” The Complainant wrote he went to accept a business card from NE#1 and, to de-escalate and offered to shake hands. The Complainant stated NE#1 shook hands with him and they “continued [their] conversation while still shaking hands” for about thirty to forty-five seconds. The Complainant alleged NE#1 became aggressive and stated, “Sir, if you don’t let go of my hand I’m gonna push back away from me!” The Complainant stated he let go of the NE#1’s hand.

b. SPD Documentation

OPA reviewed SPD documentation concerning NE#1’s interactions with CM#1 and NE#1. In relevant part, OPA summarizes the following.

CAD Call reports show that NE#1 and WO#1 responded to three incidents at the same store. The first was for a shoplifting at 10:40am concerning a “chronic shoplifter” who was claiming to own the store’s parent company. Ultimately, that call was closed as a crisis complaint. NE#1 wrote a crisis template documenting his response, contacting store security, determination that CM#1 was “obviously in crisis,” and removing CM#1 from the location to his nearby residence, which had on-site mental health services.

A second call around 2:31pm showed NE#1 and WO#1 responded to a shoplifting call at the store for a “male that’s shoplifted twice” that day. The call was closed a “Prowler – Trespass.”

A third call around 3:51pm showed NE#1 and WO#1 responded to a trespass call at a bank across the street from the store. The call remarks noted a “male [was] yelling at customers.” NE#1 wrote an incident report for this call. NE#1 documented having contacted CM#1 earlier in the day. NE#1 wrote, in this call, CM#1 was allegedly blocking the bank door to the ATM vestibule and harassing customers. NE#1 wrote about responding to the scene and advising CM#1 that he was trespassed from the property and would be arrested if he returned. NE#1 wrote that CM#1 became aggressive, but NE#1 told CM#1 he would “take [him] to the fuckin’ ground” if CM#1 continued his aggressive behavior. NE#1 wrote that CM#1 relaxed thereafter. NE#1 wrote he “attempted to guide [CM#1] by gently pushing him by the back of his arm.” NE#1 described this as ineffective. NE#1 documented his decision to leave CM#1 on the public sidewalk.

NE#1 wrote a separate supplement concerning the third incident. In it, NE#1 documented being approached by the Complainant after contacting CM#1. NE#1 wrote the Complainant was critical of NE#1’s handling of the call and stated NE#1 escalated CM#1. NE#1 wrote he had a conversation with the Complainant, and that the Complainant followed



him to another call at the store across the street. NE#1 wrote he gave the Complainant a business card and shook the Complainant's hand. NE#1 wrote the Complainant continued to admonish him and that NE#1 twice tried to pull his hand away, but the Complainant squeezed harder. NE#1 wrote he told the Complainant to let go, but this was refused, causing NE#1 to inform the Complainant to let go or he would push him away. NE#1 wrote that the Complainant let go of his hand.

c. BWV

BWV recorded NE#1 and WO#1's engagement with CM#1 and the Complainant. The facts recorded on BWV are not in dispute.

NE#1 and WO#1 contacted CM#1 outside the bank. NE#1 asked CM#1 to go to the public sidewalk, and CM#1 complied. NE#1, WO#1, and CM#1 then had an interaction that lasted about five minutes long. During the interaction, CM#1 made several nonsensical statements, and NE#1 and WO#1 advised CM#1 that he was no longer allowed back on the bank's property. Throughout the interaction, NE#1 referred to CM#1 by first name. During the majority of their interaction, NE#1 and CM#1 spoke amiably. At one point, CM#1 tensed, stepped towards NE#1, stared at NE#1, and aggressively stated to NE#1, "Why are you trying to jack me, son. Fuck you." CM#1 then immediately smiled at NE#1. NE#1 responded, "[CM#1]. Hey. You do that again, I'm gonna take you to the fucking ground. That's what's gonna happen." CM#1 replied, "I respect you, I respect you." NE#1 and WO#1 continued to engage with CM#1, offering to walk him home multiple times. CM#1 refused. NE#1 and WO#1 then walked away from CM#1, leaving CM#1 on a public sidewalk.

While NE#1 and WO#1 waited to cross the street, the Complainant approached. The Complainant told NE#1, "So listen, you can relax a little bit. Like, dude was standing there, you putting your hands on him, man." NE#1 responded that he had interacted with CM#1 earlier in the day, to which the Complainant replied it did not matter. NE#1 stated, "Okay, I appreciate your opinion . . ." The Complainant then interrupted to ask the officers to hear him first. Over the next four minutes, NE#1, WO#1, and the Complainant conversed about the propriety of NE#1's contact with CM#1. Generally, the Complainant expressed his opinion that NE#1 was escalatory; NE#1 opined that he was respectful. WO#1 offered that NE#1 had prior interactions with CM#1 and explained generally that any differences in their body language was attributable to WO#1's role as a "cover" officer, whereas NE#1 was the "contact" officer. NE#1 and WO#1 went to cross the street. NE#1 told the Complainant that, if he had any issues with the situation, he was free to contact OPA.

NE#1 and WO#1 crossed the street to handle another call at the store. The Complainant also crossed the street towards the store and continued to speak to the officers.¹ Both NE#1 and the Complainant stated that the other was escalating the situation. The Complainant stated NE#1 was "touching" CM#1, which NE#1 stated was true. The Complainant then said NE#1 got "aggressive" with the Complainant after he criticized NE#1. NE#1 denied getting

¹ During their continued conversation, NE#1 characterized the Complainant as "following" him. The Complainant stated he was going to the store anyway of his own accord.



“aggressive.” NE#1 then stepped away to request a case number for a business card. WO#1 stepped away with the Complainant to have a conversation. NE#1 and WO#1 went into the store and NE#1 ended his BWV.

NE#1’s BWV then started back up almost immediately after his previous BWV ended. NE#1 was standing in the entrance area of the store. The Complainant approached. During the BWV buffering period during which the video, is not audio, but recording, BWV depicted the Complainant approach NE#1 and offer his hand to shake. NE#1 accepted, and the two shook hands. The handshake lasted about thirty seconds total and is described below.

After NE#1 and the Complainant had been shaking hands for about five seconds, NE#1 used his free hand to activate his BWV, which activated audio recording. Over about the next twenty seconds, the Complainant asked NE#1 if he lived in the community. When NE#1 responded he did not, the Complainant explained that he lived in the community, stating, “when [you] come in the community, and deal with me and my people that live here, bro, treat them respectfully.” After the two had been shaking hands for about twenty-five seconds, NE#1 stated, “Sir, let go of my hand.” The Complainant did not appear to let go of NE#1’s hand.² The Complainant then stated, “Sir, listen to me. Listen to me. I’m shaking you hand.” NE#1 responded, perceptibly raising his voice, “You will let go of my hand now or I will push you off of me. You understand?” The Complainant then let go of NE#1’s hand. WO#1 approached. NE#1 appeared to touch his BWV. The Complainant stated, “try to turn it off bro.” NE#1 responded, “I didn’t turn it off.” The BWV remained recording consistently throughout this time. The Complainant accused NE#1 of getting aggressive. NE#1 responded that he asked the Complainant twice to let go of his hands. The Complainant turned to WO#1. NE#1 stated to the Complainant, “Now you need to remove yourself from this situation.” The Complainant told WO#1 that NE#1 was “out of control.” NE#1 walked away from the Complainant. The Complainant walked into the store.

d. OPA Interview – Complainant

OPA interviewed the Complainant. The Complainant’s interview was generally consistent with his web complaint.

The Complainant described seeing NE#1 and WO#1 interacting with CM#1. The Complainant said he saw NE#1 approach CM#1 and immediately put his hands on him, whereas WO#1 stood with his hands held in a non-threatening way. The Complainant described NE#1 as having his hands on CM#1 almost the entire time. The Complainant said he confronted NE#1 about his interaction, and NE#1 responded dismissively and defensively and accused him of making assumptions. The Complainant stated he continued talking with NE#1 and WO#1 across the street at the store, but NE#1 was sarcastic.

The Complainant stated he offered to shake NE#1’s hand. The Complainant said NE#1 took off his gloves in order to shake his hand. The Complainant described himself and NE#1 shaking hands and conversing cordially for about thirty seconds. The Complainant then described NE#1 becoming aggressive and yelling at the Complainant to let go of his hand or he would push the Complainant. The Complainant said he released his hand.

² Neither actual handshake itself is not visualized at this point of the BWV, but OPA’s finding concerning the Complainant not letting go is based on body language and contemporaneous audio statements.



e. OPA Interview – NE#1

OPA interviewed NE#1. NE#1 described responding to multiple calls for service on the incident date. NE#1 said one call involved CM#1, a man he knew to be in crisis. NE#1 stated he knew CM#1 lived in a nearby mental health facility. NE#1 said he offered to walk CM#1 home and put his hand on the back of CM#1's arm to escort him. NE#1 described this as unsuccessful.

NE#1 said, after breaking contact with CM#1, the Complainant approached to provide negative feedback on how he handled the call, stating he put hands on CM#1. NE#1 stated he spent three cycles of the nearby traffic light discussing the call with the Complainant, explaining they have successfully used that tactic with CM#1 in the past.

NE#1 stated he crossed the street, and the Complainant followed, becoming more escalated. NE#1 stated that the Complainant reapproached while NE#1 and WO#1 had begun handling their other call at the store. NE#1 stated that, while the two shook hands, the Complainant admonished him for not living in the City. NE#1 stated he tried to pull his hand away twice, but the Complainant would not let go. NE#1 stated he asked the Complainant to let go of his hand, but the Complainant refused. NE#1 stated he then told the Complainant to let go of his hand or he would push him off.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional

The Complainant alleged NE#1 was dismissive and threatened him with violence.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. SPD Policy 5.001-POL-10. Additionally, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." *Id.*

The Complainant raised two separate but related issues. The first was NE#1's demeanor towards him during their entire interaction, the second concerned NE#1's statement that he would "push" the Complainant off if he did not let go of his hand. Neither violated the Department's professionalism policy.

During their interaction, the Complainant offered critique of NE#1's conduct during the call; NE#1 disagreed with that critique. While attempting to respond to another call, NE#1 took the time to speak with the Complainant for over four minutes. During this time, it appeared neither party was going to agree with the other. NE#1 offered for the Complainant to contact OPA if he had a complaint concerning his engagement with CM#1.

OPA recognizes, reviewing BWV in hindsight, that the Complainant did not get the conversation he wanted. It also could be that this complaint may have been avoided entirely had NE#1 exercised even more patience or, perhaps, just listened to the Complainant without offering any disagreement. But the professionalism policy does not require this much. NE#1 was not obligated to engage in an open-ended conversation with an interested, but uninvolved, member



of the public concerning his most recent call. NE#1 took a reasonable amount of time to hear the Complainant's perspective, disagreed with it, and offered for the Complainant to file a complaint if he so chose. NE#1 then disengaged and left to attend his next call.

The issue of NE#1's statement that he would "push" the Complainant off if he did not release his hand presents a closer call. However, considering the totality of the circumstances, OPA finds that this did not constitute an unnecessary escalation of events. Viewed from NE#1's perspective, he had spoken with the Complainant for more than four minutes in an unsuccessful attempt to address the Complainant's concerns. When this did not work, NE#1 offered for the Complainant to contact OPA and, on request, provided his name and badge number. NE#1 then walked across the street to attend another call. The Complainant—whether following or going about his day—crossed the street too and continued to press the conversation. NE#1 then provided his business card with an incident number on it and, again, walked away to address the next call. The Complainant then approached a third time and offered to shake his hand. NE#1 accepted, removing his glove to do so. The Complainant then shook NE#1's hand for about thirty seconds while questioning him about where he lived and criticizing his work interactions. When NE#1 asked the Complainant to let go of his hand, the Complainant refused, even verbally acknowledging that he was still holding NE#1's hand. At that point, if NE#1 wanted to release his hand from the Complainant—an assertion of bodily autonomy NE#1 had every right to demand in that situation—he either needed to use some level of force, such as yanking his hand away, threaten to use force, or continue to request that the Complainant release his hand. Considering the totality of his interactions with the Complainant, based on the evidence provided, it was not unprofessional to threaten to use *de minimis* force to end the unwelcome handshake.

As before, OPA recognizes that the Complainant has a different perspective on this interaction. Also, as before, it may be that if NE#1 had spent some undefined additional minutes talking with the Complainant while shaking his hand, this entire complaint could have been avoided. But NE#1 did not have unlimited time, nor was he required to continue shaking hands with someone after withdrawing his permission to continue doing so.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #2

8.100 - De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force

The Complainant alleged NE#1 failed to use de-escalation with CM#1.

SPD Policy instructs that: "When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics in order to reduce the need for force." SPD Policy 8.100-POL-1. Officers are also encouraged to use team approaches consider whether any officer has successfully established rapport with the subject. *Id.* The selection of de-escalation options is to be guided by the "totality of the circumstances." The policy gives several examples of de-escalation emphasizing the use of communication, time, distance, and shielding to minimize the need for force. *Id.*

This allegation is unfounded. Overall, NE#1's engagement with CM#1 was respectful and de-escalatory. Moreover, the actions the Complainant alleged were escalatory did not occur as described by the Complainant. The complainant



alleged NE#1 had his hand on CM#1 for “almost the entire time.” This was not the case. BWV showed that during the incident NE#1 lightly touched CM#1 on the back of the arm on two occasions. Both contacts were brief and did not appear to agitate or escalate CM#1. Additionally, OPA reviewed BWV from an incident earlier in the same day involving CM#1 and NE#1. In that earlier incident, NE#1 used a similar light touch on CM#1’s arm and successfully gained compliance from him.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #1 - Allegation #3

16.090 - In-Car and Body-Worn Video, 16.090-POL-1 Recording with ICV and BWV, 5. Employees Recording Police Activity, b. When Employees Record Activity

The Complainant alleged NE#1 turned off his BWV before threatening to push him.

SPD Policy 16.090 POL 1(5) details requirements for employees recording police activity. The policy outlines, among other things, the requirements to notify persons they are being recorded, when employees must record activity, when employees have discretion to record, situations when employees will not record, and when employees may stop recording. See SPD Policy 16.090 POL 1(5)(a)-(i).

The BWV showed this did not occur. BWV recorded this entire incident.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**